# THE GOVERNMENT OF ARGENTINA[1]

The Argentine constitution is especially interesting to the student of political institutions, because it furnishes an excellent example of the hybrid offspring produced by planting Anglo-Saxon institutions upon Hispanic soil. With but few modifications, the people of Argentina took for their fundamental law the constitution of the United States of America. This is equally true, of course, of every other Hispanic American country except Chile, which went to England for its model; but Argentina furnishes the best example of Anglo-Saxon laws under Hispanic administration. Brazil has been a republic for but a few decades, and only the "A. B. C." countries of the world south of the Rio Grande can boast of being republics in fact as well as in name.

In the preamble to the Argentine constitution, which sets forth the reasons for the adoption of the instrument, we find two significant deviations from the phraseology of its model. The representatives who gathered together in the constituent congress of Santa Fe were not representatives of United States or Provinces, but of the Argentine nation. This is technically true notwithstanding the opposition emanating from the provinces toward the federal government. The provinces, while retaining all powers not granted to the nation, conferred upon the central authority far greater powers than were originally granted to the general government of the United States. The provinces were largely artificial units, lacking any very distinctive characteristics, and the necessity for welding them into a

[1] By far the best study of Argentine political institutions with which the writer is familiar is *La Ley Constitucional Argentina*, by Manuel Agosto Montes de Oca, Buenos Aires, 1914. This work is used as a text book by the students in the University of Buenos Aires. Another valuable contribution is Augustin de Vedia's *Constitucion Argentina*, Buenos Aires, 1907. Various other authorities have been used in the preparation of this paper, among them being Alberdi's *Bases de la Constitución*.

strong and efficient state was generally recognized, but this was not really achieved without jealousies on the part of the provinces.

It is also worth noting that these men desired to secure the blessings of liberty, not only to themselves and their posterity, but "to all men who wish to dwell on Argentine soil". The constant aim of the Argentine Government has been to encourage immigration to its shores, and every inducement has been given Europeans to forsake their native countries for the promised land of the new world. One article of the constitution specifically imposes upon congress the duty of fostering immigration, and other articles are carefully framed to guard the foreigner against injustice, and induce him to accept the advantages and responsibilities of citizenship. According to the census of 1914, Argentina had a density of population of but 6.83 persons per square mile, compared with 258.30 for England in the same year, 191.19 for France, and 120.04 for Germany. Its need of a dependable labor supply is great.

## THE EXECUTIVE POWER

The Constitution declares that

> The executive power of the nation shall be exercised by a citizen with the title of 'President of the Argentine Nation'.

The framers of the Argentine constitution intentionally departed from their American model in shaping the provisions relating to the executive. "This in one of the places," wrote Juan Bautista Alberdi, Argentine lawyer and publicist, who prepared the draft upon which the constitution was based, "in which our Hispano-Argentine constitution must be separated from the example of the federal constitution of the United States." It was intended to give even more power to the executive than had been granted to the American President, in order that he might be able to maintain national unity. The fear of dictatorship could not quite be forgotten, however, and the result has been a grant of great power, coupled with numerous provisions intended to prevent its abuse. The Chilean constitution furnished the basis for this portion of the fundamental law of Argentina.

Article 75 provides for the succession to the presidency:

> In case of the illness, absence from the capital, death, resignation, or dereliction of the president, the executive power shall be exercised by the vice-president of the nation. In case of dereliction, death, resignation, or inability of the president and vice-president of the nation, congress shall determine what public functionary shall fill the office of president, until the cause of inability has been removed, or a new president is elected.

The Argentine constitution provides that the vice-president shall become the president pro tempore if the president leaves the federal capital. By another article, the president is forbidden to leave the capital without the consent of congress. This strange provision is without parallel in any constitution, and the reason for its adoption has become purely historical.

In order to be eligible for the presidency or the vice-presidency, one must have attained the age of thirty years, be a member of the Roman Catholic Church, and have an annual income equivalant to approximately two thousand American dollars. One must also be a native citizen, or, if born abroad, the son of a native citizen. The inclusion of sons of native Argentines born in foreign lands was deemed advisable primarily because of the great number of patriots who had been driven from the country by the tyrant Rosas, and whose sons had in consequence been born abroad. The income requirement inserted in this article serves to illustrate the conservatism of the men who dominated the Santa Fe convention. It was adopted with but little debate. A fierce parliamentary battle was waged, however, over the provision that the president and vice-president must be members of the Roman Catholic communion. Some pointed out that it was contrary to the liberal spirit of the present, and others maintained that it was not only pernicious, but utterly useless, because the overwhelming majority of the inhabitants of the nation were Roman Catholics, and would not elect a member of any other faith to the highest office of the nation. But many argued vehemently that the very fact of Roman Catholic numerical superiority in Argentina made it necessary

for the welfare of the country to guard against the possibility of any but a Roman Catholic president; and this view ultimately prevailed.

The period of office of the president and vice president is six years, and they cannot be reëlected without the interval of one term. The provision regarding temporary ineligibility to reëlection was inspired by the fear that the president, once safely installed in office, would declare himself supreme dictator for life, as have so many South American executives. The same safeguard is found in the most of the other Hispanic American constitutions. There are numerous other provisions in the Argentine constitution, intended to keep the executive within constitutional limits, for the Argentines know only too well from experience that the tendency of their presidents has been to arrogate to themselves powers never granted by the constitution and to forget their obligation to resign at the end of six years. "The President of the nation ceases to have power the very day that his term of six years expires;" stipulates Art. 78, "and no event whatever which may have interrupted this term can be a reason for prolonging it."

The president and vice-president are elected by presidential electors from each province, chosen by direct vote of the people. They are voted for by separate tickets. The system is that used in the United States, with only a few slight differences in detail, and possesses the same defect of making possible the election of a minority candidate.

The powers of the president are enumerated in great detail in the constitution:

> He is supreme head of the nation, and has in his care the general administration of the country. He has power to enact such laws and regulations as are necessary for the carrying out of the laws of the nation, taking care not to alter their spirit by means of regulating exceptions. He is the direct and local head of the capital of the nation.

Of course, the president does not exercise directly his control over the federal capital. The local executive of Buenos Aires is an intendente, or mayor, appointed by the president, by and

with the advice and consent of the senate; and the legislature consists of a deliberative council, similarly appointed. The iniquity of this system is freely admitted, and in the message which the president sent to congress in 1907 he advocated that the capital should have "a government of popular origin, even as have the most modest communes of the Republic." No action was taken, however, upon this suggestion for reform, and Buenos Aires, a city with a population of 1,615,223 at the beginning of the year 1919, still lacks democratic institutions.

The Argentine constitution deviates from its American model by providing that the president shall take part in the formation of laws in accordance with the constitution, in addition to approving and promulgating them. Another article stipulates that "all laws may originate in either house on the initiative of its respective members, or of the executive power. . . " Thus the president, who is naturally in a better position than anyone else to know the needs of the country, is permitted to participate freely in the making of the country's laws, and to frame and to introduce into congress such measures as he may deem advisable, instead of making mere suggestions and recommendations, and leaving it to friendly congressmen to prepare measures which may in part meet his wishes. Good government requires sympathy and goodwill between the executive and the legislature. It is unreasonable, according to the Argentine viewpoint, to expect adequate enforcement of the laws by a branch of the government that has had no hand in their making.

The president is also given power, by and with the advice and consent of the senate, to appoint the magistrates of the supreme court, and of the inferior courts. He controls such matters as reprieves, pardons, the acceptance of resignations, and the granting of leaves of absence. The president of the United States, by and with the advice and consent of the Senate, names all officers whose appointment is not otherwise provided for by the constitution. The president of the Argentine nation, by himself alone, makes such appointments. There is thus put into the hands of the Argentine executive a tremendous power, for the man with positions to distribute is always sure of a large follow-

ing. There has been a tendency on the part of the presidents to abuse this privilege, but it is doubtful if the requirements of senatorial approval would mean more than that a greater number of politicians would share in the distribution of positions among their faithful henchmen. The Argentine president has power, by himself alone, to appoint and remove the members of his cabinet. This is a logical provision, since they are responsible only to him and their continuance in office must of necessity depend upon his pleasure.

The executive "prorogues the ordinary sessions of congress, or calls extraordinary sessions when grave questions of order or progress require it". Strangely enough, congress has no inherent right to meet until convoked by the president; nor can it adjourn without his sanction. Article 55 provides that:

> Both houses shall meet in ordinary session every year, from the first of May until the thirtieth of September. They may also be convoked in extraordinary session, or prorogued by the president.

This article has been interpreted by the supreme court to mean that congress is entirely dependent upon the executive for its sessions to begin and to end. He has the right of convoking the two houses, either in ordinary or extraordinary session, and also of proroguing them. Should he refuse to convoke congress, there is apparently no constitutional remedy. This defect of the constitution has called forth severe criticism from prominent Argentines, among them such men as Nicolas A. Calvo, international lawyer and publicist.

The president

> declares war, and grants letters of marque and reprisal, with the authority and approbation of congress.

He also

> concludes and confirms treaties of peace, of commerce, of navigation, of alliance, of boundaries, and of neutrality; contracts all other negotiations required for the maintenance of amicable relations with foreign powers; he receives their ministers and admits their consuls.

The executive is thus charged with the control of the foreign relations of the nation, though subject to the approval of the legislature. As the supreme head of his country, it is but logical to make him its spokesman, and to grant him a large measure of discretion in directing the foreign policy. The same power that declares war also makes peace.

The Argentine constitution, like its model, makes its chief executive commander-in-chief of all land and naval forces of the nation. Troubled as it was for years by constant internal dissensions, threatened with invasion on numerous occasions with boundary disputes but recently settled, after it seemed that recourse to arms would be inevitable, Argentina has had good reason to maintain a well trained and thoroughly equipped army and navy. The military service of the Republic was reorganized in 1901, and is compulsory for all citizens between the ages of twenty and forty-five. The chief executive thus becomes ex officio commander-in-chief of a large and efficient army and navy. He is given power to dispose of all military forces on land and sea, and to regulate their distribution and organization according to the necessities of the nation. This function is exercised, however, concurrently with congress, for another article of the constitution gives to that body the right

> to dispose of the land and naval forces in times of peace and war; to make rules and regulations for the government of said forces.

There are numerous provisions in the constitution concerning the declaration of a state of siege, which involves the suspension of the writ of habeas corpus. The president has the power, by and with the advice and consent of the senate, to declare that a state of siege exists in any part of the nation, in case of foreign attack. This power is exercised by congress in case of domestic disturbance, except when it is not in session, when the right is vested in the executive. While the framers of the constitution recognized the necessity of giving some branch of the government the right to declare martial law in case of widespread disorder, they were fearful that this power would be abused, and took care to surround it with numerous limitations.

In case of internal disturbance or foreign invasion which impedes the exercise of this constitution, and the action of the authorities created by it, the province or territory where the disturbance occurs shall be declared in a state of siege, all constitutional guarantees remaining suspended there. But during the suspension the president of the Republic shall have no power to condemn or to inflict punishment. In such a case his power over persons shall be limited to arrest and transportation from one point to another of the nation, in case they should refuse to leave the country.

These checks upon the power of the executive have been more honored in the breach than in the observance. On numerous occasions the entire nation has been declared in a state of siege; and various parts of the republic have been placed under martial law, with a consequent suspension of constitutional guarantees, more than thirty times since the promulgation of the constitution. The writ of habeas corpus has frequently been suspended without any regard to constitutional limitations. During the past few years, with the coming of a greater degree of political stability, the tendency has been to enforce more strictly the letter and the spirit of the fundamental law.

One of the strangest restrictions upon the actions of the president is that he may not leave the territory of the capital without the permission of congress, except during a recess of that body, when he may leave for reasons of the gravest public importance. This provision was inserted in the constitution as originally adopted in 1853. The citizens of Buoneos Aires were dissatisfied, and had refused to take any part in framing the document. Yet by special law Bueonos Aires had been made the capital of the nation, and was the city in which the federal officials must reside. The seeds of conflict were sprouting rapidly. The framers of the constitution hoped that the prestige of the president might be sufficient to prevent an open outbreak of hostilities while he while he remained in the capital, but feared that his absence might furnish a pretext for revolution. So it was agreed to require the continued residence of the president in Buenos Aires during his term of office. The necessity for this provision has long since passed, but the provision still remains.

The constitution, as adopted at Santa Fe in 1860, provided for a cabinet of five ministers: interior, foreign affairs, treasury, justice, education and public instruction, and war and navy. By an amendment adopted in 1898, the number of ministers was increased from five to eight, the departments of war and navy being separated, and those of agriculture and public works being added. It is a poor policy to have the number of the executive departments specifically stated in the constitution, because an amendment thus becomes necessary every time an additional department is created. There is no position in the Argentine cabinet corresponding to that of secretary of state in the United States, every portfolio being considered an equal honor, and equally desirable.

These ministers, according to the constitution.

> shall have in their charge the dispatch of the affairs of the nation, and shall corroborate and legalize the acts of the president by means of their seals, without which requisite these acts will fail of their effect.

The next article provides that

> every minister is responsible for the acts which he authorizes; and conjointly with his colleagues for those which he approves.

This would seem to establish definitely in Argentina the English system of responsible government. The provision was taken from the constitution of Chile, where the principle of ministerial responsibility to the legislature has long been recognized.

But in Argentina the words "Every minister is responsible for the act which he authorizes," is only a meaningless phrase. To whom are the ministers responsible? In practice they are responsible only to the president. He appoints them and removes them at his pleasure, and they stay in office as long as they have his confidence. Many of the framers of the constitution of Santa Fe thought they had definitely provided for ministerial responsibility, and on several occasions congress called for the resignation of the cabinet after a vote of confidence had failed to pass both houses. But the ministers refused to resign, and congress found itself powerless to compel them to take such action.

As early as 1863, President Mitre's minister of the interior, Dr. Rawson, in the chamber of deputies, denied the right of interpellation. He had been summoned to the chamber under the terms of Article 63, which provides that

> Each house may require the presence of the ministers of the executive power, to receive from them any explanations or information that may be deemed necessary.

He declared, indeed,

> I have not been called to be interpellated. Had I thought that, I should have refrained from coming, for I do not recognize the right of interpellation. I have come here to give information, and if the honorable deputy who has the question to ask does not wish to conform to the doctrine I have stated, I am very sorry; but that is our form of government. . . . . Between the giving of information by the president through his ministers and the right of interpellation, there is as great a difference as exists between the English monarchy and the American republic.

One of the clearest expositions of the Argentine doctrine is found in a message which President Sarmiento sent to the senate. According to his interpretation, the provision that each house may require the presence of members of the cabinet, in order to receive from them explanations or information, merely means that ministers may be compelled to attend the legislative sessions. Once in attendence, they cannot be compelled to give the desired information, or to participate in the meetings, for that is merely a right granted to them by another article of the constitution, and cannot be converted into an obligation. This reasoning seems dangerously like sophistry—a mere splitting of hairs to avoid the spirit of the law—but it has been accepted by such eminent statesmen as Mitre, Sarsfield, Rawson, Avellaneda, and Costa, and has become a fundamental part of the Argentine system of government.

The right of the ministers to attend the meetings of congress, though they may not vote, is a logical corollary of the president's right to participate in legislation. The executive may always have his direct representatives before congress, ready at any

time to present fully his position. A bill framed by the executive department of the government need not be entirely abandoned to the tender mercies of an ofttimes hostile legislature. In order to keep them entirely free from legislative influence, members of the cabinet are forbidden to become either senators or deputies, unless they resign from office. This restriction is not found in the constitution of Chile, from which so many of the provisions of the Argentine constitution relating to the executive are taken.

### THE LEGISLATIVE POWER

The legislative power is vested in a congress composed of two houses, namely, a chamber of deputies and a senate. The chamber of deputies is composed of representatives elected directly by the people of the provinces and of the capital, in the proportion of one for each thirty-three thousand inhabitants. The proportion originally agreed upon was one for each twenty thousand, but the population grew so rapidly that in 1898 it was found necessary to amend the constitution. It was also found necessary to modify the system of election of deputies. At first all members of the lower house were elected at large, every voter in a province being permitted to cast his ballot for every deputy from that province. This was the ideal of Alberdi, who wrote: "Each deputy represents the nation, not the people who elect him". But this practice naturally prevented a fair representation of minorities. In fact, it was even possible for a majority of the deputies to represent a minority of the voters. The system was finally abandoned, and in its place was substituted the American method of dividing the larger units into regular electoral districts.

The constitution declares that

> To be a deputy one must have attained the age of twenty-five years, exercised the rights of citizenship four years, and must be a native of the province which elects him, or have resided there for two years immediately preceding.

In the debates over the constitution, strenuous objections were raised to the residential requirement. Some of the sparsely

settled provinces felt that it might be more to their advantage to have the privilege of selecting representatives from neighboring provinces; but the more thickly settled districts were sufficiently powerful to force the adoption of the clause.

Article 41 provides that "Congress shall formulate a general law for . . . elections". The right of determining the franchise is thus granted to the federal government, instead of to the provinces. Uniformity in this matter is of greater importance in Argentina than the preservation of local autonomy, because there is not the diversity of economic and social conditions among the Argentine provinces that is found among the states of the American Union. Deputies are elected for a four-year period and are eligible for reëlection. Half of the chamber is renewed every two years.

All laws concerning taxes and the levying of troops must originate in the chamber of deputies. The right of the lower house to control the purse strings of the nation is of course purely historical, dating from the time when it was wrested from an unwilling monarch by representatives of the people. The right of the chamber of deputies to exclusive initiation of legislation in regard to the levying of troops has no historical precedent; but the control of the army is so essential to any dictator wishing to maintain himself in power that it was thought best to entrust this matter to the popular branch of the legislature.

As under the American system, the lower house is given the exclusive right to impeach members of the executive and judicial departments, the senate sitting for this purpose in a judicial capacity. This article contains a most unusual provision, however, since it confers the right of impeachment for common crimes. The framers of the constitution of Santa Fé evidently confused the functions of the legislature and the judiciary in giving congress the power to take cognizance of common crimes, a power reserved to the courts in every other civilized country of the world.

The senate is composed of two senators from each province, elected by their respective legislatures, and two senators from the capital. Though representing the legislatures, and not the

people, the members of the Argentine senate have complete freedom of action, and are never directed by the provincial assemblies how to vote, as was so frequently done in the United States before the passage of the seventeenth amendment.

In order to be elected senator, one must have attained the age of thirty years, have been six years a citizen of the nation, and be a native of the province from which one is elected, or to have resided there for two years immediately preceding election. There is also an income requirement of approximately two thousand American dollars annually. This income qualification is only one of numerous provisions which serve to demonstrate the inherent conservatism of the men who framed the Argentine constitution. Indeed, conservatism seems to be a characteristic of the entire nation. At the present time (1922) the radical party is in control of the government, but this party is radical in name only, and is almost as conservative in it economic policies as the conservatives themselves. The so-called socialist party has a wide following in Buenos Aires and other cities, but is very moderate in its demands.

The term of office of senators is nine years, and senators are eligible for reëlection for any number of terms. One-third of the senate is renewed every three years. The vice-president is ex-officio president of the body. As seen above, the senate is given judiciary capacity in cases of impeachment. It is also given the right to declare any part of the republic in a state of siege, in case of foreign invasion. The constitution does not provide whether the president may declare a state of martial law in case of external attack if congress is not in session, but as he may do so in case of internal commotion, which is less serious, it is taken for granted that he may do so.

Article 56 stipulates that:

> Each house is the judge of the election, rights, titles, and qualifications of its members. Neither house may enter into session without an absolute majority of its members; but a smaller number may compel the attendance of the absent members in such manner and under such penalities as each house may provide.

The wording of this section has been justly criticised. If neither house may enter into session without an absolute majority of its members, how may a smaller number compel the attendance of those absent? Without entering into session? If this minority does enter into session, contrary to the stipulations of the constitution, how can it apply "such penalties as each house may provide?" As a minority, or after the return of the delinquents? And will the offenders vote for their own punishment? The form is very defective, being a bad translation into Spanish of the English original. In practice, a majority is required in order to enter into ordinary session, or to deliberate; but if a quorum does not exist, a smaller number may call the session, fixing it for another day, and compelling, meanwhile, the absent ones to attend, under penalties which the chamber has already determined, or which it shall determine when it meets as a quorum.

The Argentine congress is vested with power over a wider variety of activities than the congress of the United States. It is empowered to legislate concerning import and export duties, to impose direct taxes, for a definite period of time and in equal proportion throughout the whole territory of the nation, to contract loans on the credit of the Republic, and to direct the use and sale of national lands. Argentina has consistently maintained a high protective tariff ever since the adoption of the constitution, hoping in this way to protect the industries that even yet have scarcely begun to make their appearance. Manufactured goods are charged almost prohibitive rates, but raw materials are admitted on more favorable terms. European and American manufacturers evade the tariff laws by importing the various parts of the articles they have to sell, and then establishing in Argentina "manufacturing establishments" which are little more than assembling plants. As would naturally be expected, the high import duties add greatly to the cost of living in the republic. The apparently endless amount of red tape connected with the customs houses is a source of never ending irritation to foreign shippers. But with it all Argentine foreign trade has prospered, and has increased steadily year by year. The total value, in gold pesos, of the imports during 1921 was,

approximately, 635,000,000 gold pesos, and of the exports, 672,000,000 pesos. The balance of trade is thus slightly in favor of Argentina, and has been for a number of years. This is necessary to maintain the position whereby the republic is enabled to meet the interest payments on its foreign debts. The gold peso is the unit of currency, and has a value of five francs, or $0.96475. The money in circulation is, however, chiefly paper pesos, which have a value fixed by the conversion law 1899 at forty-four per cent of the gold peso, or $0.42449.

Congress is given power

to establish and regulate a national bank in the capital, and its branches in the provinces, with power to issue bills of credit.

The framers of the constitution intended to create a bank of the nation, with the power of note issue, and divorced from politics. But the result was to bring fiscal matters directly into politics. Indeed, Argentina has suffered for years from the extravagant and unscrupulous use of its national credit for the promotion of schemes calculated to benefit individuals rather than the public. The great increase in military expenditures during the disputes with Chile, and the high cost of maintaining the struggle with Brazil for naval supremacy have also helped to increase the burden. A certain percentage of Argentina's population is poor and apparently unprogressive, and cannot be expected to bear its share of the costs of government. These costs are met mainly by the high tariff on imported merchandise, and by excise and stamp duties of a far-reaching and often vexatious character. Nothing is permitted to escape taxation, and duplicated taxes on the same thing are frequent. In Argentina these burdens bear heavily upon the laboring classes, and in years of depression thousands of immigrants leave the country, unable to meet the high costs of living. For the year 1900 the total expenditures of the national government, fourteen provincial governments, and sixteen principal cities were estimated to have been 208,811,925 pesos paper, or 91,877,247 pesos gold. This means that the cost of government for that year was nearly twenty American dollars for every man,

woman, and child in the republic. More than seventy per cent of this charge was on account of national expenditures.

There is a Banco de la Nación, which has been established upon a sound basis, and which in 1906 had deposits amounting to 167,989,000 pesos, with a capital of 54,000,000 paper pesos, and 3,700,000 gold pesos. This bank had a subscribed capital of about 150,000,000 paper pesos on December 31, 1921, and had received cash amounting to 23,000,000 gold pesos and 410,000,000 paper pesos. At the same time its deposits in commercial and savings accounts totalled 919,965 gold pesos and 1,303,413,692 paper pesos. Discounts and advances were 3,316 gold pesos and about 904,000,000 paper pesos. The power of note issue is not possessed, however, by this institution, as provided by the constitution, but directly by the national government, which has adopted the independent treasury system. These measures have served to give greater stability to the value of the circulating medium, and to prevent the ruinous losses caused by constant fluctuations in value, but the rate established prevents the further appreciation of the currency. There is a well-defined movement among Argentine bankers to establish a banking system similar to the federal reserve system of the United States.

Congress is given power "to arrange for the foreign and domestic debt of the nation". This provision is superfluous, since another clause gives that body the right "to contract loans on the credit of the nation". Payments on the national debt have long been the largest item of public expenditure, and the debt is constantly growing, the annual budget still showing a considerable deficit. The national revenues and expenditures for the thirty-seven years from 1864 to 1900, inclusive, show a total deficit for the period of 408,260,795 pesos gold, this being met by internal and external loans, and by a continued increase in the scope and rate of taxation. In 1918 Argentina's total debt was the equivalent of 866,380,000 American dollars, and the budget for that year showed a deficit of 17,577,174 paper pesos.

The constitution provides that congress shall

> grant sums from the national treasury to those provinces whose revenues do not cover, according to their estimate, the ordinary expenses.

While these subsidies to the provinces are only loans, and must eventually be repaid, the provincial governments have frequently been unable to resist the temptation of securing popularity with their constituents by rolling up expenses and leaving the bills to be paid by the national government. Of course, some day there must come a reckoning, but that is left for future administrations. In the period from 1887 to 1903 several provinces increased their expenditures more than 100 per cent without anything like a corresponding increase in revenue; and one permitted an increase of 500 per cent. The federal government is now gradually reducing these subsidies with the constant increase in economic development throughout the country.

The Argentine constitution departs radically from its model by giving congress the power to dictate the civil, commercial, penal, and mining codes, the laws on these subjects thus to be made uniform throughout the entire nation. A wide field of exclusive jurisdiction is still left to the provincial tribunals, however, and the system has resulted in securing uniform enforcement of law throughout the country, without destroying the autonomy of the provinces. In 1862 congress declared the commercial code existing in Buenos Aires at that time to be the national code. A new commercial code was adopted in 1889, and has since been modified on several occasions; but it still shows the influence of the old Spanish commercial code of 1829. The civil code was adopted in 1869, and was amended nineteen years later so as to permit civil marriages, which had not previously been recognised. In 1866 were adopted the criminal and mining codes.

Naturalization and citizenship, bankruptcy, and counterfeiting of securities and current coin of the state are all matters upon which congress is given power to legislate. Under the same heading are included laws requiring the establishment of trial by jury, and another article specifically provides that:

> Congress shall promote reforms in the present legislation in all its branches, and shall establish trial by jury.

Under the terms of this article a bill was introduced into the senate in 1879, providing that after January 1, 1872, trial should be

by jury in both federal and provincial courts. The fact that no question was raised as to the constitutionality of this bill shows the extent to which the provinces have been subordinated to the general government. Numerous questions as to its expediency were raised, however, and after the bill had passed the upper house it was so amended in the chamber of deputies that the senate refused to consent to the changes, and no agreement could be reached. In October, 1871, an act was passed by both houses providing that the executive should appoint a commission consisting of two persons, who should study the matter. The president appointed two Argentine scholars, who made a voluminous report to congress in 1874, and there the matter rested. It has not been acted upon since. Most of the lawyers, familiar with the old legal system, and believing that the people are not sufficiently well educated to make trial by jury a success, have consistently opposed the change, and have been able to prevent its introduction.

Congress is given control of foreign and inter-provincial commerce, and of post offices and post roads. In practice it also exercises a large measure of control over intra-provincial commerce, having nearly as much power in this matter as any highly centralized government. It is required

> to fix definitely the territorial limits of the nation and those of the provinces, to erect new provinces and to determine by special legislation the organization, administration, and government to be established in the national territory which is outside the limits assigned to the provinces.

When the constitution of Santa Fe was adopted, the boundaries of the nation were unsettled. Several wars seemed almost certain as a result of territorial altercations, but every dispute was settled without resort to arms.

Difficult as it was to settle the nation's boundaries, it proved almost impossible to fix the provincial limits. Every province laid claim to far more than its rightful share of the territory of the nation; some were even more exorbitant in their demands. Congress appointed a commission, but no agreement could be

reached. In 1882, a law was passed to permit the provinces to settle their boundary disputes by arbitration, if they could. This method finally solved the difficulty. Argentine statesmen frequently were chosen as arbiters, and on more than one occasion the supreme court acted in that capacity. All the disputes were finally settled in a peaceful manner.

The 16th paragraph of Article 67 is modeled upon the "general welfare" clause of the constitution of the United States, but it is very much more comprehensive than its American prototype. It gives to congress power

> to provide for all that conduces to the prosperity of the country, to the advancement and well-being of all the provinces, and to the progress of education, prescribing plans for general and university instruction, promoting industry, immigration, the building of railroads and navigable canals, the colonization of national lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of interior rivers by laws protecting their banks, by temporary concessions of privilege, and by the offer of rewards.

This clause has been interpreted liberally by the courts, and has resulted in direct federal control over a great many matters which in the United States are the subject only of state regulation. One of these is education.

In practice, the question of the regulation of public instruction has been delegated to the executive and it is for him to determine the general plans which congress is authorized by law to make. According to Article 5, the constitution of each province must provide for primary instruction, and for this purpose the provinces are subsidized by the general government. Until 1905, federal control of primary education was largely indirect, but on October 17 of that year a law was passed providing that the national government should proceed to establish directly, in those provinces soliciting it, a system of elementary schools. Under this law the control of elementary education is rapidly passing into the hands of the federal government.

Primary education is free, and is subsidized by the provincial and general governments. It is secular and nominally compulsory between the ages of six and fourteen. Secular education

has been vigorously opposed by strict churchmen, and efforts have been made to maintain separate schools under church control. In the national capital and territories, control is vested in a national council of education, with the assistance of local school boards; and this council is also rapidly assuming control in the provinces under the provisions of the act of 1905. Despite large expenditures for educational purposes 35.1 per cent of the population was illiterate as recently as 1919.

One of the aims of the framers of the constitution was to encourage European immigration. Not only is congress given the right to promote immigration, but Article 25 specifically provides that

> the federal government shall encourage European immigration, and shall not restrict, limit or oppress with any taxes whatever the entrance into Argentine territory of foreigners who come with the intention of engaging in agriculture, improving industries, and introducing and teaching sciences and arts.

Under the terms of this article a bureau of emigration has been established, which in 30 years has spent 50,000,000 pesos in its attempts to attract immigrants to the republic. Special agents have been established in Europe for the purpose of circulating propaganda. Free lands are offered to desirable immigrants, and the passage money is often advanced. The constitution grants to foreigners some special privileges not even enjoyed by natives of the country. From 1857 to 1917 the number of immigrants by sea was 4,762,067, Italians predominating, with Spaniards a close second. From 1914 down to the end of 1918, however, abnormal world conditions resulted in a considerable excess of emigration over immigration. However, reconstruction since 1918 has caused the pendulum to swing back again. Whereas, the immigration in 1918 was only 50,622 against an emigration of 59,908, during 1919 and 1920 there was an immigration of 69,879 and 155,322 respectively as against an emigration for these years of 67,710 and 104,731. That is, for the three years 1918 to 1920 there was an immigration of 275,823 and an emigration of 232,349. Of course, in all considerations regarding

the movement of people to and from Argentina, one should bear in mind the seasonal immigration made up very largely of Italians who go back and forth between Italy and Argentina yearly, following the harvests.

It has been held by the courts that the right possessed by congress to build railroads includes the right to operate them, and also to exempt them from all taxation, either national or provincial. The Province of Santa Fe laid a tax upon the Central Argentine Railroad, a corporation chartered by the national government, and the railroad appealed to the supreme court, which ruled that the money must be refunded. The development of railroads in Argentina has been rapid. During the first half of the nineteenth century not a single rail was laid, but in 1854, a law of the Province of Buenos Aires provided for the construction of a railroad, and three years later this was opened to the public with a total length of ten kilometers (6.2 miles). On January 1, 1922, the ways open to traffic had a total mileage of 22,741, of which 3835 (17.3 per cent) belonged to the state. The telegraph lines on January 1, 1921, had a mileage of 52,070 of which the national government owned 25,167.

The legislative body is given the right to grant amnesties, as opposed to our custom of vesting this function in the executive. It has exercised the right on numerous occasions, following political disturbances. The clause giving congress power to grant pensions has been a source of wholesale corruption and graft. A number of bills were introduced for the purpose of correcting the evil, but they were so amended in the two chambers that they lost all practical value. But in 1904 was passed a law creating the Caja Nacional de Jubilaciones y Pensiones (Bureau of Superannuation and Pensions), which is to pass upon all matters relating to pensions. This bureau has developed an efficient organization, and is rapidly putting a stop to illegitimate drains from this source upon the Argentine treasury.

Congress is given a large measure of control over the land and naval forces of the nation. It makes rules and regulations for their government, and also for the organizing, arming, and disciplining of that portion of the provincial militia which may be

employed in the service of the general government. The enforcement of the regulations concerning provincial militia is entrusted, however, to the provincial authorities. Congress is also given power to permit the entrance of foreign troops into the territory of the nation, and the departure of the national forces.

After a bill has been passed by both houses, it goes to the executive for his signature. This must be done even if the bill has been initiated by the executive. One president introduced a measure, and subsequently vetoed it after it had passed both houses in its original form. Congress brought judicial action to compel him to promulgate the law, on the ground that his original proposal obligated him to do so since no amendments had been added. But the supreme court refused to accept this reasoning, and declared that if the president, after introducing a measure had reason to believe that its passage was no longer desirable for the best interests of the nation, he was free to veto it.

Every bill not returned to congress by the executive within ten working days automatically becomes law. The Argentine constitution contains no provision similar to the "pocket veto" of the American system, whereby the executive may prevent the passage of a bill in the closing days of the legislative session by failing to affix his signature. Instead, every measure not approved by the Argentine preisdent within ten working days thereby becomes law, even if the chambers have adjourned before the expiration of the period. This arrangement has worked poorly in practice, because it has permitted a great deal of foolish and even vicious legislation to be crowded into the last two or three days of the session, when there is not sufficient time to consider every bill in detail. The constitution of the United States provides for approval within ten days, exclusive of Sundays, while that of Argentina requires approval within ten working days. This provision, taken from the constitution of Chile, was intended to allow for the great number of feast or Saints' days.

No bill failing to pass either house can be reconsidered in any session of the same year. Amendments may be made by either

house, and must ordinarily receive the sanction of the other chamber before going to the president for his signature. But there is a peculiar provision of the Argentine constitution which permits a two-thirds majority in one house, operating in harmony with the president, to enact legislation contrary to the desires of the other chamber. When a bill has been amended in one chamber, and those amendments have been disapproved by the chamber of its origin, it again returns to the revising house. If the amendments are there approved a second time by a majority of two-thirds of the members, the bill returns to the originating house, which can then reject the proposed amendments only by casting a two-thirds vote in opposition to them. This dangerous provision makes possible the control of the government by a small faction of the representatives of the people. The senate, elected for nine years, registers but slowly the frequent changes in the popular will, and a majority of its members, still holding office by virtue of a mandate given indirectly and long since forgotten, may force the passage of legislation contrary to the will of the popular house. The veto possessed by the executive is suspensive, not absolute, since it may be overridden by a two-thirds majority vote of both chambers.

### THE JUDICIAL POWER

At the head of the federal judicial system is the supreme court, consisting of five judges and an attorney general. It exercises original jurisdiction over all matters relating to ambassadors, ministers, and foreign consuls, and in any case where a province is a party. It has appellate jurisdiction over all cases which relate to points touched upon in the constitution, and to the laws of the nation, and to all admiralty and maritime cases; its appellate jurisdiction also extends to all cases to which the nation is a party, and to those arising between two or more provinces, between a province and citizens of another province, between citizens of different provinces, between a province or its citizens and a foreign citizen or state. No one can be a member of the supreme court unless he is a lawyer of eight years' standing in the nation, and possesses all the qualifications requisite for a senator.

Below the supreme court there are four courts of appeal, composed of three judges each, situated in the cities of Buenos Aires, La Plata, Parana, and Cordoba. The lowest federal courts are the circuit courts, three of them in the capital, and one in each province. They have jurisdiction over many matters reserved exclusively to state tribunals in the United States. Aliens have the right of choosing between federal and provincial jurisdiction in both civil and criminal prosecutions. All federal judges hold office during good behavior.

The provincial judiciary consists of judges advocate, justices of the peace, and superior tribunals, called the supreme court in some provinces, and in other the superior tribunal of justice. In the province of Buenos Aires, immediately below the supreme court, there are courts of appeal. The judges advocate exercise both federal and common jurisdiction in the territories.

Ordinarily, the trial of a criminal case is held in the province in which the act is alleged to have been committed, but the Argentine constitution differs from its American model by providing that if the act has been committed

> outside the limits of the nation against the law of nations, Congress shall determine by a special law the place where justice shall be administered.

In other words, the federal tribunals are given jurisdiction over criminal acts which may have been committed upon foreign soil.

The civil and criminal courts of the nation are both corrupt and dilatory. In May, 1899, the minister of justice stated in the chamber of deputies that the machinery of the courts was antiquated, unwieldy, and incapable of performing its duties; that fifty thousand cases were then awaiting decision in the minor courts, and ten thousand in the federal division; and that a reconstruction of the judicial system had become necessary. In June, 1899, he sent his plan of reorganization to congress, but no action was taken beyond referring the bill to a committee for examination and report. There the matter has rested ever since and Argentina is still struggling under the burden of an unwieldy and well-nigh useless judicial system inherited from Spain.

## GENERAL PROVISIONS

It was inevitable that Argentina should eventually adopt the federal system of government, as stipulated in the first article of its constitution. Though the forces of a common tongue, religion, customs, legislation, administration, and common sacrifices in the cause of liberty all tended to weld the people together into a common bond, there were also decentralizing tendencies. For many years the provinces had enjoyed practical independence of one another, and of a common superior. They were unwilling to sacrifice their own petty interests and jealousies for the welfare of the nation. Federalism was the natural compromise. And so they turned to the constitution of the United States for a solution of their problems. "It is the one model of true federation that exists anywhere in the world", enthusiastically declared Dr. Gorostiga, one of the delegates to the constitutional convention of 1853. It was not long, however, before the framers abandoned in part their model, in order to maintain their religious heritage from Spain, by declaring that "the Federal Government supports the Roman Catholic Apostolic Church". Some wished to go still farther, and add that Roman Catholicism was the only true faith. But this was voted down, because it was argued that such a statement would not represent the belief of all the citizens of the new nation; and that, while the state might support the religion of the vast majority, it had no right to declare the faith of a minority false. From statistics of 1895 it appears that in each 1,000 of the population, 991 are Roman Catholics, 7 Protestants, and 2 Jews, the Jews being entirely of Russian origin, sent into the Republic since 1891 by the Jewish Colonization Association under the provisions of the will of Maurice Baron de Hirsch, an Austrian Jewish financier and philanthropist, who bequeathed more than $50,000,000 for the purpose of establishing Hebrew colonies in Argentina. Between 1895 and 1908 the number of Jews in the country increased from 6,085 to 30,000.

The federal government provides an annual subsidy for the purpose of maintaining the Roman Catholic churches and clergy. Churches and chapels are also founded and maintained by religious

orders and private gifts. At the head of the Argentine hierarchy stand one archbishop and five suffragan bishops, who have five seminaries for the education of the priesthood.

The framers of the constitution took the greatest care to protect the rights of foreigners, as well as those of the citizens of the new nation. Aliens were encouraged to become citizens by means of numerous concessions. It was hoped that these measures would encourage immigration. Though the Argentine "bill of rights" includes all the inhabitants of the nation, thus embracing foreigners and nationals alike, the protection of foreigners is made doubly certain by the insertion of another clause, which stipulates that they

> shall enjoy in the territory of the Nation the same civil rights as are vested in the citizens; they shall be allowed to engage in industrial, commercial, and professional occupations; to own, hold, and sell real estate; to navigate the rivers and travel along the coasts; to practice freely their religion; to dispose of their property by will, and to contract marriage according to the laws. They are not bound to become citizens, nor to pay forced extraordinary taxes. . . . .

The national policy towards immigrants from other lands is thus clearly set forth in the fundamental law, and not left to the caprice of politicians. Naturalization is permitted after a residence of but two consecutive years in the Republic, and even this short period may be reduced upon application, and proof that the applicant has rendered special services to the nation.

The rights of all the inhabitants of the Argentine nation, guaranteed by the constitution, have been taken almost *in toto* from the constitution of the United States. Few of them indeed were recognized in the days of the Spanish domination, and matters were but little improved under the reigns of successive dictators. With the adoption of the constitution of Santa Fe, and the eventual unification of the nation, these guarantees have become something more than sonorous phrases in the mouths of political orators, and to-day most of them are carefully respected in practice. One seldom hears the highly suggestive question of the Argentine politicians of the old school: "What is a constitution among friends?"

Among the guarantees of the constitution are included the right to work and engage in lawful industry, to navigate and engage in commerce, to petition the authorities, to enter and leave the territory of the nation, or remain in it, to publish ideas without previous censorship, to use and dispose of property, and to associate for useful purposes. The attempt to insert full religious guarantees met with strong opposition in the constitutional convention. Some delegates maintained that a common faith was essential to national unity. But even clericals refused to uphold this proposal. Catholicism, they declared, had nothing to fear from other religions. The strongest argument, however, was the economic one. "How," asked some of the delegates, "can we expect men to come from other lands, if we do not permit them to worship as in the homes of their fathers?" The fear of restricting immigration insured the passage of the provision guaranteeing to all men the right freely to profess their religion. The final vote was 30 to 5.

A fundamental principle of Argentine law is the inviolability of private property. The right of expropriation is strictly limited and can be exercised only with previous indemnification. The operation of this law has seriously hampered the municipalities in carrying out their plans for public works. In 1884, for example, a law was passed authorizing the City of Buenos Aires to expropriate property for the purpose of constructing the Avenida de Mayo, the great central boulevard of the capital. Under this law considerable property was taken over by the city on either side of the proposed avenue, in order to prevent the possible erection of unsightly buildings. The owners of the property protested, however, and the court upheld them. The municipality, it said, could expropriate only such land as it needed directly for the project. This decision protected individual rights, even at the cost of sacrificing the needs of the community.

The Argentine constitution also guarantees numerous other rights which, according to the Anglo-Saxon conception of liberty, are absolutely fundamental. Among them are the right of habeas corpus, the inviolability of person and property—sub-

ject, of course, to necessary exceptions—the prohibition of ex post facto legislation, the prohibition of torture, and of the death penalty for political crimes. In this article is also found a most unusual provision:

> The prisons of the nation shall be healthful and clean, with the purpose of keeping safely, not of punishing, the criminals detained in them; and all measures which, under the pretext of precaution, cause undue mortification, shall be laid to the charge of the judge who authorizes them.

For a long time after the adoption of the constitution this clause represented little more than a hope, but today it has become in large measure a reality. The national government spends annually more than a million and a half pesos on its penal institutions. Schools have been established within the prison walls, with a corps of competent instructors, to teach the illiterate. Workshops have been introduced, in order to teach men trades. Nothing has been left undone to make the prisoners useful members of society at the expiration of their sentences.

The constitution of the United States provides that the right of the people to bear arms shall not be denied. Under Argentine law this right has been converted into an obligation:

> Every Argentine citizen is obliged to take up arms in defense of his country and of this constitution. . . . .

This provision has been strictly interpreted, and the regular training of the Argentine youth has produced an efficient military organization. In order to make naturalization still more attractive, naturalized citizens are exempted from the provisions of this clause for a period of ten years after obtaining their final papers.

A very significant article of the Argentine constitution, in view of the turbulent history of the republic, is that which stipulates that

> The people do not deliberate and govern except through representatives and authorities created by the constitution. Every armed force or gathering which assumes the rights of the people and petitions in their name is guilty of the crime of sedition.

No one wished to prohibit peaceful gatherings, but it was hoped to prevent those revolutionary uprisings from which the country had suffered so frequently. As a matter of fact, the federal government has gradually acquired the long desired stability, as the people have learned to appreciate the advantages of democracy. There has been no successful uprising of any importance since 1890, and at that time the people were roused to fury by the unpatriotic acts of an unscrupulous executive. President Celman had been squandering the revenues of the country without regard to the day of reckoning, and systematically robbing the national treasury with the aid of his friends from Cordoba. The leaders of public opinion in the capital, feeling that conditions were intolerable, called a great mass meeting of the people. As announced in the daily papers, the gathering was to be peaceful and was for the purpose of discussing measures of reform "in the English style". But President Celman was taking no chances with the "English style" of public meeting; perhaps he remembered the good old English crowd that once gathered to protest against the actions of Charles I. At any rate, he hastily wrote out his resignation, and sent it to be read to the populace. The bloodless revolution had accomplished its purpose.

Amendment is made to the constitution by means of a convention called for that specific purpose, two-thirds of each house of congress first having declared the need of a change. The constitution of 1853 originally provided that all proposed amendments should originate in the senate, the indirectly elected and therefore more conservative chamber, and also that no amendment should go into effect until ten years after it had been approved by the people. Fortunately, these restrictions were removed when Buenos Aires became a part of the nation. Even yet, however, it is exceedingly difficult to modify the fundamental law; the extreme conservatism of the Argentine people manifests itself in their desire to make change as difficult as possible.

Following the example of their American model, the framers of the Argentine constitution declared the constitution, the laws of the nation passed by congress in accordance with it, and

treaties with foreign nations to be the supreme law of the land. This provision has been interpreted in its fullest sense, giving the general government even more power in many ways than that exercised by the federal government of the United States.

Liberty of the press is fully guaranteed, and carried out in practice. In fact, this right has been a fundamental part of Argentine law from the time that freedom was won from Spain. As early as 1811 the patriots issued a decree which stated:

> The Government, faithful to its principles, wishes to restore to the American (Argentine) people, by means of political liberty of the press, that precious right of nature which an outworn abuse of power has usurped from them, in the firm belief that it is the one method of communicating the truth, of forming public opinion, and of consolidating that unity of sentiment which is the real strength of states.

More than once, since the declaration of this principle, has the freedom of the press been denied in Argentina, but today it has been established upon a sound basis.

The residuum of power remains with the Argentine provinces, following the American system, the constitution providing that the provinces are to retain all powers not delegated to the federal government. Broad powers have been vested in the general government, however, and although the provinces have remained autonomous, they are clearly subordinated to the nation. The provinces are given the right, with the consent of congress, to enter into treaties with one another for the purpose of administering justice, or of encouraging economic development. Several of the small interior provinces have taken advantage of this provision to establish a common judiciary. Internal improvements are often undertaken by them in concert.

The final article of the constitution states that:

> The governors of the provinces are the legitimate agents of the federal government for the purpose of enforcing the observance of the constitution and the laws of the nation.

This provision would increase still further the dominance of the central government but for the fact that in practice it is unenforceable. The provincial governors are made the agents of

the federal government, but they are responsible to no one for the faithful performance of this duty. The clause was framed by Alberdi, the "father of the Argentine constitution", who also provided that governors of provinces might be impeached by the chamber of deputies before the senate. This would have given the central government a measure of control over the provincial authorities. But it was stricken out, leaving the governors to do as they pleased. Despite the admonition of the constitution, it is seldom that they feel obliged to enforce federal laws, and this work is left largely in the hands of the federal authorities.

The patriots of the Rió de la Plata who consecrated their lives to the task of freeing their country from Spanish tyranny talked glibly of liberty and democracy. But with them the words were little more than empty phrases; they knew not how to bestow, and the nation knew not how to receive, a government based upon the sovereignty of the people. The masses were ignorant and poverty-stricken; their leaders had been trained in the school of absolutism. And so for more than half a century there alternated periods of hopeless anarchy and remorseless depotism, but thinly veiled behind the forms of free government. Even the adoption of the present constitution did not mark the end of the struggle, though it paved the way for national unity. Gradually, however, the people began to interest themselves in the affairs of their country, and to participate in its government. Reforms were demanded and obtained. The ideal of democracy became a reality.

Many changes are still needed in the form of government of the republic. The entire judicial system must be reorganized along the lines of modern jurisprudence, and freed of its antiquated Spanish traditions. The senate must be democratized. The masses of the people, half of them still illiterate, must be educated to an appreciation of the duties as well as the privileges of citizenship. The leaders must be made to realize more fully their duty to the nation. But all these things will come in the fulness of time. The fight for democracy has been won, and Argentina has taken her rightful place among the great free nations of the world.

AUSTIN F. MACDONALD.